IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. .....

CITY OF DETROIT, a municipal corporation,
BOARD OF ASSESSORS OF THE CITY OF DETROIT,
Petitioners-Plaintiffs,
MICHIGAN STATE TAX COMMISSION,
Appellant,
v.
AMBASSADOR STEEL COMPANY,
a Michigan corporation,
ADVANCE STEEL COMPANY,
a Michigan corporation,
AMERICAN STEEL CORPORATION,
a Michigan corporation,
BARSTEEL CORPORATION,
a Michigan corporation,
CONTRACTORS STEEL COMPANY,
a Michigan corporation,
CRAFT STEEL & SUPPLY COMPANY, INC.,
a Michigan corporation,
EWALD STEEL COMPANY,
a Michigan corporation,
KASLE STEEL CORPORATION,
a Michigan corporation,
KENWAL PRODUCTS CORPORATION,
a Michigan corporation,
PARAGON STEEL CORPORATION,
a Michigan corporation,
TITAN STEEL COMPANY,
a Michigan corporation,
Respondents.

SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI TO MICHIGAN COURT OF APPEALS, DIVISION 1, AND APPENDIX

To: The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners-Plaintiffs present this supplemental petition pursuant to Rule 24 (5) to call attention to intervening matters not available at the time of forwarding their petition for writ of certiorari to Michigan Court of Appeals, Division 1, and Appendix, on Friday, June 13, 1969. Purpose hereof is to explain delay in delivery by personnel of that court of certified transcript of record including proceedings therein which fact did not come to attention of undersigned counsel until June 20, 1969.

Petitioners find themselves in the dilemma of either being turned back from the threshold of consideration of their petition for certiorari due to absence of a timely filed certified transcript of the record, etc., or, in the alternative, of directing attention to failure on the part of clerk of the court below to prepare, certify and forward same despite request made and later assurance that it was being attended to.

Following the denial on March 20, 1969, by Michigan's Supreme Court of application for leave to appeal, counsel for petitioners was delayed in tracing disposition of a portion of the records involved. These were exhibits, transcripts of hearing, etc., brought up from the Michigan State Tax Commission where these contested 1966 personal property assessments originated.

Once these were located, attention was called to same by a letter directed to Clerk of the Court of Appeals by counsel for petitioners on June 5, 1969. This was pursued further by sucessive steps detailed in affidavits incorporated in Appendix D attached hereto. Originals of these affidavits by Richard R. Roesch, assistant attorney general

assigned to represent Michigan State Tax Commission (pp. 31-32), by Marguerite McKeever, record clerk in the Court of Appeals (p. 33), in addition to that of undersigned counsel (pp. 29-30) have been filed with the Clerk of this Court in support of this supplemental petition.

On June 10, Mr. Roesch delivered the records as certified by the State Tax Commission directly into the hands of clerk of the Court of Appeals with a request that these together with record of proceedings in that court be certified to the Clerk of the United States Supreme Court. On June 13, counsel for petitioners called on the telephone to the Detroit office of said Court of Appeals, spoke to Marguerite McKeever, record clerk, and requested her to inquire of the Lansing office regarding the matter.

On the same June 13, a telephone call was received by counsel for petitioners from Marguerite McKeever advising him that the records had been certified and were being forwarded from the Lansing office to the Clerk of the United States Supreme Court in Washington. This gave counsel for petitioners a feeling of assurance that said records would be delivered at approximately the same time as the petitions, fee and proof of service mailed from Detroit on June 13.

Petitioners in good faith expected that the steps thus taken would result in perfecting the filing of their petition in the manner and within the time required by Rule 22. Due to circumstances beyond their control and of which neither they nor their counsel were aware, said records were found to be resting in the Lansing office of the Court of Appeals on June 20, 1969, awaiting the return of the clerk of that court from a judicial conference which he was attending in California.

Once this was discovered, upon peremptory order of a member of the court below, the records were prepared, certified, and, it is anticipated, were delivered into the office of the Clerk of this Court.

Unless consideration is here given and allowance made for the mischance of such delayed filing of the records, etc. petitioners will be deprived of any remedy to obtain review of the decision of the Court of Appeals (165 N.W. 2d 875 (1968)) and determination by this Court of the proper application of the Import-Export clause to the facts of these 1966 tax cases. Petitioners and taxpayers alike will be unduly pitted against each other in administration of State tax laws from which the latter claim immunity, until same is ultimately resolved.

RELIEF

In view of the circumstances shown, petitioners pray that their petition, etc., be accepted as timely filed and that upon consideration thereof this Court grant them a writ of certiorari to the Michigan Court of Appeals, Division 1.

Respectfully submitted,

ROBERT REESE,
Corporation Counsel,

JULIUS C. PLISKOW,
ARTHUR YIM,
Assistants Corporation Counsel,
1010 City-County Building,
Detroit, Michigan 48226,
965-4200, Ext. 584,
Attorneys for Petitioners-Plaintiffs.

June 23, 1969.

APPENDIX D

AFFIDAVIT OF JULIUS C. PLISKOW

State of Michigan,
County of Wayne—ss.

Julius C. Pliskow, being first duly sworn, deposes and says that he is Assistant Corporation Counsel, representing City of Detroit in the above-entitled matters and that in connection with petition for certiorari submitted therein he personally took the following steps to obtain preparation of the transcript of the record in the case including the proceedings in the Michigan Court of Appeals as certified by the clerk of that court:

by letter dated June 5, 1969 to the Clerk of the Court of Appeals at Lansing, Michigan requesting that such steps be taken; and

by telephone call on June 9, 1969 to Richard R. Roesch, Assistant Attorney General, at Lansing, Michigan, who had possession of the several transcripts and records as certified by Michigan State Tax Commission, to have same delivered to Clerk of the Court of Appeals at Lansing for preparation, certification and shipment to Clerk of Supreme Court of the United States and by telephone call on June 13, 1969 to Marguerite McKeever, record clerk in Detroit office of Michigan Court of Appeals requesting that she ascertain whether the employees of the Lansing Office of said Court had prepared, certified and shipped the record to the Clerk of the Supreme Court of the United States; and

by forwarding to the Clerk, Court of Appeals, Lansing, Michigan, a copy of letter dated June 13, 1969, addressed to John F. Davis, Esq., Clerk, Supreme Court in which it was noted that "respective records in the court below with certified schedule of proceedings from the Clerk of the Court of Appeals" would be received under separate cover.

Further deponent says that the failure to prepare, certify and ship same to the Clerk of the Supreme Court did not come to his attention until this date; that he had received no prior call or communication either from Mr. Roesch, from the Clerk of the Court of Appeals at Lansing or from the record clerk in the Detroit office to apprise him of any delay or neglect regarding same.

Further deponent says that the failure to have same delivered to the Clerk of the Supreme Court was not due to any culpable negligence on the part of deponent or of any other representative of the City of Detroit.

Further deponent says not.

/s/ Julius C. Pliskow

Subscribed and sworn to before me this 20th day of June, A.D., 1969.

/s/ Rosemary Yurik,
Notary Public, Wayne County, Michigan.
My commission expires July 18, 1972.

AFFIDAVIT OF RICHARD R. ROESCH

State of Michigan,
County of Ingham—ss.

Now comes Richard R. Roesch, an Assistant Attorney General of the State of Michigan, who being first duly sworn deposes and says:

1. That he represents the Michigan State Tax Commission in its litigation and participated in such capacity in the consolidated cases reported in 165 NW 2d 875 (1968).

2. That subsequent to denial of leave to appeal by the Michigan Supreme Court on March 20, 1969 from the decision of the Michigan Court of Appeals in these consolidated cases the respective records and transcripts of hearings before the Michigan State Tax Commission were returned to the Michigan Court of Appeals; and that subsequently these records and transcripts of hearings were returned by the Michigan Court of Appeals to the Michigan State Tax Commission, which had originally certified them to the Court of Appeals.

3. That, upon being advised by the office of the City of Detroit's Corporation Counsel that the City of Detroit would petition the Supreme Court of the United States for a writ of certiorari to the Michigan Court of Appeals in the consolidated cases, the certified records and transcripts were returned to the Court of Appeals on June 10, 1969 by this deponent; and that they were delivered directly into the hands of Ronald L. Dzierbicki, Clerk of the Court of Appeals, who was requested to certify them, as well as the record of proceedings before the Court of Appeals, to the Clerk of the United States Supreme Court.

4. That said Ronald L. Dzierbicki, Clerk of the Court of Appeals, received the respective records and transcripts, which had been originally certified to that Court by the Michigan State Tax Commission, and assured the deponent herein that he would contact Julius C. Pliskow, Assistant Corporation Counsel of the City of Detroit, to assure him that all the desired transcripts and records would be timely certified to the Clerk of the United States Supreme Court.

And further deponent sayeth not.

/s/ Richard R. Roesch

Subscribed and sworn to before me, a Notary Public in and for said County, this 20th day of June, A.D., 1969.

/s/ Leona M. Hudnut,
Notary Public, Ingham County, Michigan.
My commission expires October 17, 1972.

AFFIDAVIT OF MARGUERITE McKEEVER

State of Michigan,
County of Wayne—ss.

Marguerite McKeever being first duly sworn, deposes and says that she is record-clerk in the Detroit office of Michigan Court of Appeals and that on June 13, 1969 at the request of Julius Pliskow, Assistant Corporation Counsel for the City of Detroit, she called by telephone to the Lansing office and made inquiry as to the certification, packaging and shipment of record in the case of City of Detroit, et al v. Ambassador Steel Co., et al to the Clerk of the Supreme Court of the United States by the office of Clerk of Michigan Court of Appeals. Further deponent says not.

/s/ Marguerite McKeever

Subscribed and sworn to before me this 20th day of June, 1969.

/s/ Sanda Demetriou,
Notary Public, Wayne County, Michigan.
My commission expires November 20, 1972.